



# Arizona State Senate **Background Brief**

September 27, 2006

## **Note to Reader:**

The Senate Research Staff provides nonpartisan, objective legislative research, policy analysis and related assistance to the members of the Arizona State Senate. The *Research Briefs* series, which includes the *Issue Brief*, *Background Brief* and *Issue Paper*, is intended to introduce a reader to various legislatively related issues and provide useful resources to assist the reader in learning more on a given topic. Because of frequent legislative and executive activity, topics may undergo frequent changes. Additionally, nothing in the *Brief* should be used to draw conclusions on the legality of an issue.

## **ARIZONA ADMINISTRATIVE PROCEDURE ACT: Agency Rulemaking**

### **INTRODUCTION**

The primary purpose of rulemaking is to give notice to the public of the substantive or procedural requirements that an agency has established for activities falling within its statutory authority. The Arizona Administrative Procedure Act (APA) provides procedures for agency rulemaking and handling appeals of agency decisions. For purposes of this brief, the term “agency” is used to refer to a state agency, board or commission.

An agency may make rules only if the Legislature has given it authority to do so. Unless exempt from rulemaking procedures, a rule is valid only if it is made in substantial compliance with the APA or other statutory procedures applicable to the agency. These requirements are designed to ensure adequate public participation in the rulemaking process.

### **RULEMAKING PROCESS**

The APA requires most agencies to prepare and make available to the public, by December 1 of each year, the regulatory agenda that the agency expects to follow during the next calendar year. It also requires an agency to open a rulemaking docket and inform the public that the agency intends to work on a particular rule by publishing a Notice of Rulemaking Docket Opening in the Arizona Administrative Register (Register), published monthly by the Secretary of State (SOS).

The rulemaking docket must remain open while the rulemaking proceeding is pending. A proceeding is pending from the time the agency begins to consider proposing the rule until the agency decides to no longer pursue the rule, until one year after the Notice of Rulemaking Docket Opening is published and no action has been taken, or until the rule becomes effective. The Rulemaking Docket includes information such as the subject of the proposed rule, agency contact information, where copies of pertinent information may be inspected, the current status of the proposed rule, any known timetable for agency decisions or actions on the rule, and pertinent dates regarding the rule.

After providing notice of a docket opening, the agency may meet informally with any interested party to discuss the proposed rulemaking action and may post public notice of these meetings in the Register. Once the rule is drafted and the agency is ready to begin the process of making the rule into law, a Notice of Proposed Rulemaking is filed with the SOS. This notice includes the preamble, which includes an economic impact statement, why the rule is necessary and the exact wording of the rule. The agency is required to provide notice at the time the Notice of Proposed Rulemaking is filed with the SOS to any person who has asked to be notified of the proposed rulemaking. Before beginning any further proceedings, the agency must allow at least 30 days after the publication of the proposed rule for public comment. During this time, the agency is required to conduct a public hearing on a proposed rule, if the agency receives a written request to do so. The agency must give the public 30 days' notice of the scheduled proceeding.

If, as a result of public comment or holding a public hearing, the agency determines that a proposed rule requires substantial change, the agency issues a Notice of Supplemental Proposed Rulemaking for publication in the Register.

Once the comment period is over, the rulemaking record is closed. The agency has 120 days from the close of the record to either terminate the proceeding or to submit the rule to the Governor's Regulatory Review Council (GRRC) for approval.

## ***Governor's Regulatory Review Council***

GRRC is responsible for reviewing each agency's rules and receiving annual reports regarding substantive policy statement directories and timeframe rule compliance. To submit a rule to GRRC, an agency must compile a rule package consisting of the rule and its preamble and economic, small business and consumer impact statements. GRRC is required to review the rule package and approve or return it, in whole or in part, within 90 days of its receipt.

GRRC consists of six Governor-appointed members who serve staggered, three-year terms and the Director of the Arizona Department of Administration (ADOA) or the Assistant Director, who is responsible for administering GRRC and serves as an ex officio member and chairman of GRRC. Statute requires at least one member of GRRC to represent the public interest, at least one to represent the business community and at least one to be an attorney. One member is selected from a list of three persons who are not legislators submitted by the President of the Senate and one from a list submitted by the Speaker of the House of Representatives. GRRC is required to meet at least once a month and members are eligible to receive \$200 for each day on which the Council meets and reimbursement for expenses. ADOA's Support Services Division funds GRRC.

## ***Attorney General***

Statute exempts some agencies from GRRC approval of their rules and are required instead to submit their rule packages to the Attorney General. These agencies include the Arizona Corporation Commission and an agency that is headed by a single elected official. The Attorney General is required to approve or disapprove the rule within 60 days of its receipt. For its approval, the rule must be clear, in proper form, within the power of the agency and in compliance with any appropriate procedures.

## ***Secretary of State***

Once a rule is approved, either by GRRC or the Attorney General, the rule package is filed with the SOS, who affixes to each document the time and date of filing, indicating the rule is final. The rule becomes effective 60 days after filing with the SOS. All final rules are published in the Register and the Arizona Administrative Code, which contain the full text of each final rule, including rules made by statutory exemption.

## ***Five-year-review Report***

Agencies are required to review their rules at least once every five years to determine

whether their rules need to be amended or repealed. GRRC maintains a five-year calendar of when each agency must review its rules and submit its five-year-review report summarizing its findings. GRRC approves or returns, in whole or in part, the agency's report upon its review. If an agency fails to submit its report, the rules scheduled for review expire and are no longer enforceable. In order to reestablish the rules, the agency must go through the rulemaking process.

## ***Substantive Policy Statements***

Agencies are required to file substantive policy statements with the SOS to be published in the Register. A substantive policy statement is a written expression that informs the general public of an agency's current approach to, or opinion of, the requirements of laws and court orders, including the agency's current practice, procedure or method of action based upon that approach or opinion. The statement is advisory only and does not include internal procedures.

Agencies are required to maintain and update annually a directory summarizing the subject matter of all currently applicable rules and substantive policy statements that is open to the public. Agency heads are required to certify to GRRC that the agency has met this requirement by June 30 of each year.

## ***ADDITIONAL RESOURCES***

- Secretary of State  
1700 W. Washington, 7<sup>th</sup> Floor  
Phoenix, AZ 85007-2888  
602-542-4285  
[www.azsos.gov](http://www.azsos.gov)
- Arizona Administrative Code and Administrative Register  
[http://www.azsos.gov/public\\_services/rules.htm](http://www.azsos.gov/public_services/rules.htm)
- Arizona Administrative Procedure Act Statutes: Arizona Revised Statutes, Title 41, Chapter 6
- Governor's Regulatory Review Council  
[www.grrc.state.az.us](http://www.grrc.state.az.us)